

# HOUSE BILL No. 1377

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 24-5-0.5-3; IC 27-4-1-4; IC 27-7-14.

**Synopsis:** Regulation of home warranties. Defines a home warranty as a contract under which the home warranty provider undertakes to indemnify the warranty holder against the cost of repairing or replacing a home appliance if repair or replacement is needed. Prohibits a person from acting as a home warranty provider unless the person has obtained a license from the department of insurance (department) and deposited a surety bond, securities, or a sum of cash with the department. Prohibits the use of a home warranty form unless it has been submitted for review by the department. Requires that a person, upon purchasing a home warranty, immediately be given a copy of the home warranty, and entitles the person to rescind the home warranty and receive a full refund within three business days after acknowledging receipt of a copy of the home warranty in writing. Provides that a home warranty provider's obligation in connection with the repair or replacement of a home appliance cannot be limited to a specified dollar amount irrespective of the actual cost of repairing or replacing the home appliance. Provides that, if a home warranty contains an arbitration clause, the warranty holder cannot be required to pay the cost of repairing or replacing a home appliance before the arbitration proceeding, and the arbitration must be held in the county in which the warranty holder resides. Makes a violation of the law an unfair and deceptive act or practice in the business of insurance and a deceptive act that is actionable by the attorney general.

**Effective:** July 1, 2014.

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January 15, 2014, read first time and referred to Committee on Insurance.

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Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

## HOUSE BILL No. 1377

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 24-5-0.5-3, AS AMENDED BY P.L.273-2013,  
2 SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2014]: Sec. 3. (a) The following acts, and the following  
4 representations as to the subject matter of a consumer transaction,  
5 made orally, in writing, or by electronic communication, by a supplier,  
6 are deceptive acts:  
7 (1) That such subject of a consumer transaction has sponsorship,  
8 approval, performance, characteristics, accessories, uses, or  
9 benefits it does not have which the supplier knows or should  
10 reasonably know it does not have.  
11 (2) That such subject of a consumer transaction is of a particular  
12 standard, quality, grade, style, or model, if it is not and if the  
13 supplier knows or should reasonably know that it is not.  
14 (3) That such subject of a consumer transaction is new or unused,  
15 if it is not and if the supplier knows or should reasonably know  
16 that it is not.



1 (4) That such subject of a consumer transaction will be supplied  
2 to the public in greater quantity than the supplier intends or  
3 reasonably expects.

4 (5) That replacement or repair constituting the subject of a  
5 consumer transaction is needed, if it is not and if the supplier  
6 knows or should reasonably know that it is not.

7 (6) That a specific price advantage exists as to such subject of a  
8 consumer transaction, if it does not and if the supplier knows or  
9 should reasonably know that it does not.

10 (7) That the supplier has a sponsorship, approval, or affiliation in  
11 such consumer transaction the supplier does not have, and which  
12 the supplier knows or should reasonably know that the supplier  
13 does not have.

14 (8) That such consumer transaction involves or does not involve  
15 a warranty, a disclaimer of warranties, or other rights, remedies,  
16 or obligations, if the representation is false and if the supplier  
17 knows or should reasonably know that the representation is false.

18 (9) That the consumer will receive a rebate, discount, or other  
19 benefit as an inducement for entering into a sale or lease in return  
20 for giving the supplier the names of prospective consumers or  
21 otherwise helping the supplier to enter into other consumer  
22 transactions, if earning the benefit, rebate, or discount is  
23 contingent upon the occurrence of an event subsequent to the time  
24 the consumer agrees to the purchase or lease.

25 (10) That the supplier is able to deliver or complete the subject of  
26 the consumer transaction within a stated period of time, when the  
27 supplier knows or should reasonably know the supplier could not.  
28 If no time period has been stated by the supplier, there is a  
29 presumption that the supplier has represented that the supplier  
30 will deliver or complete the subject of the consumer transaction  
31 within a reasonable time, according to the course of dealing or the  
32 usage of the trade.

33 (11) That the consumer will be able to purchase the subject of the  
34 consumer transaction as advertised by the supplier, if the supplier  
35 does not intend to sell it.

36 (12) That the replacement or repair constituting the subject of a  
37 consumer transaction can be made by the supplier for the estimate  
38 the supplier gives a customer for the replacement or repair, if the  
39 specified work is completed and:

40 (A) the cost exceeds the estimate by an amount equal to or  
41 greater than ten percent (10%) of the estimate;

42 (B) the supplier did not obtain written permission from the



customer to authorize the supplier to complete the work even if the cost would exceed the amounts specified in clause (A); (C) the total cost for services and parts for a single transaction is more than seven hundred fifty dollars (\$750); and (D) the supplier knew or reasonably should have known that the cost would exceed the estimate in the amounts specified in clause (A).

(13) That the replacement or repair constituting the subject of a consumer transaction is needed, and that the supplier disposes of the part repaired or replaced earlier than seventy-two (72) hours after both:

(A) the customer has been notified that the work has been completed; and

(B) the part repaired or replaced has been made available for examination upon the request of the customer.

(14) Engaging in the replacement or repair of the subject of a consumer transaction if the consumer has not authorized the replacement or repair, and if the supplier knows or should reasonably know that it is not authorized.

(15) The act of misrepresenting the geographic location of the supplier by listing a fictitious business name or an assumed business name (as described in IC 23-15-1) in a local telephone directory if:

(A) the name misrepresents the supplier's geographic location;

(B) the listing fails to identify the locality and state of the supplier's business;

(C) calls to the local telephone number are routinely forwarded or otherwise transferred to a supplier's business location that is outside the calling area covered by the local telephone directory; and

(D) the supplier's business location is located in a county that is not contiguous to a county in the calling area covered by the local telephone directory.

(16) The act of listing a fictitious business name or assumed business name (as described in IC 23-15-1) in a directory assistance database if:

(A) the name misrepresents the supplier's geographic location;

(B) calls to the local telephone number are routinely forwarded or otherwise transferred to a supplier's business location that is outside the local calling area; and

(C) the supplier's business location is located in a county that is not contiguous to a county in the local calling area.



- 1 (17) The violation by a supplier of IC 24-3-4 concerning  
2 cigarettes for import or export.
- 3 (18) The act of a supplier in knowingly selling or reselling a  
4 product to a consumer if the product has been recalled, whether  
5 by the order of a court or a regulatory body, or voluntarily by the  
6 manufacturer, distributor, or retailer, unless the product has been  
7 repaired or modified to correct the defect that was the subject of  
8 the recall.
- 9 (19) The violation by a supplier of 47 U.S.C. 227, including any  
10 rules or regulations issued under 47 U.S.C. 227.
- 11 (20) The violation by a supplier of the federal Fair Debt  
12 Collection Practices Act (15 U.S.C. 1692 et seq.), including any  
13 rules or regulations issued under the federal Fair Debt Collection  
14 Practices Act (15 U.S.C. 1692 et seq.).
- 15 (21) A violation of IC 24-5-7 (concerning health spa services), as  
16 set forth in IC 24-5-7-17.
- 17 (22) A violation of IC 24-5-8 (concerning business opportunity  
18 transactions), as set forth in IC 24-5-8-20.
- 19 (23) A violation of IC 24-5-10 (concerning home consumer  
20 transactions), as set forth in IC 24-5-10-18.
- 21 (24) A violation of IC 24-5-11 (concerning home improvement  
22 contracts), as set forth in IC 24-5-11-14.
- 23 (25) A violation of IC 24-5-12 (concerning telephone  
24 solicitations), as set forth in IC 24-5-12-23.
- 25 (26) A violation of IC 24-5-13.5 (concerning buyback motor  
26 vehicles), as set forth in IC 24-5-13.5-14.
- 27 (27) A violation of IC 24-5-14 (concerning automatic  
28 dialing-announcing devices), as set forth in IC 24-5-14-13.
- 29 (28) A violation of IC 24-5-15 (concerning credit services  
30 organizations), as set forth in IC 24-5-15-11.
- 31 (29) A violation of IC 24-5-16 (concerning unlawful motor  
32 vehicle subleasing), as set forth in IC 24-5-16-18.
- 33 (30) A violation of IC 24-5-17 (concerning environmental  
34 marketing claims), as set forth in IC 24-5-17-14.
- 35 (31) A violation of IC 24-5-19 (concerning deceptive commercial  
36 solicitation), as set forth in IC 24-5-19-11.
- 37 (32) A violation of IC 24-5-21 (concerning prescription drug  
38 discount cards), as set forth in IC 24-5-21-7.
- 39 (33) A violation of IC 24-5-23.5-7 (concerning real estate  
40 appraisals), as set forth in IC 24-5-23.5-9.
- 41 (34) A violation of IC 24-5-26 (concerning identity theft), as set  
42 forth in IC 24-5-26-3.



(35) A violation of IC 24-5.5 (concerning mortgage rescue fraud), as set forth in IC 24-5.5-6-1.

(36) A violation of IC 24-8 (concerning promotional gifts and contests), as set forth in IC 24-8-6-3.

(37) A violation of IC 21-18.5-6 (concerning representations made by a postsecondary credit bearing proprietary educational institution), as set forth in IC 21-18.5-6-22.5.

**(38) A violation of IC 27-7-14 (concerning home warranties) or of rules adopted under IC 27-7-14, as set forth in IC 27-7-14-18.**

(b) Any representations on or within a product or its packaging or in advertising or promotional materials which would constitute a deceptive act shall be the deceptive act both of the supplier who places such representation thereon or therein, or who authored such materials, and such other suppliers who shall state orally or in writing that such representation is true if such other supplier shall know or have reason to know that such representation was false.

(c) If a supplier shows by a preponderance of the evidence that an act resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error, such act shall not be deceptive within the meaning of this chapter.

(d) It shall be a defense to any action brought under this chapter that the representation constituting an alleged deceptive act was one made in good faith by the supplier without knowledge of its falsity and in reliance upon the oral or written representations of the manufacturer, the person from whom the supplier acquired the product, any testing organization, or any other person provided that the source thereof is disclosed to the consumer.

(e) For purposes of subsection (a)(12), a supplier that provides estimates before performing repair or replacement work for a customer shall give the customer a written estimate itemizing as closely as possible the price for labor and parts necessary for the specific job before commencing the work.

(f) For purposes of subsection (a)(15) and (a)(16), a telephone company or other provider of a telephone directory or directory assistance service or its officer or agent is immune from liability for publishing the listing of a fictitious business name or assumed business name of a supplier in its directory or directory assistance database unless the telephone company or other provider of a telephone directory or directory assistance service is the same person as the supplier who has committed the deceptive act.

(g) For purposes of subsection (a)(18), it is an affirmative defense



1 to any action brought under this chapter that the product has been  
 2 altered by a person other than the defendant to render the product  
 3 completely incapable of serving its original purpose.

4 SECTION 2. IC 27-4-1-4, AS AMENDED BY P.L.278-2013,  
 5 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 6 JULY 1, 2014]: Sec. 4. (a) The following are hereby defined as unfair  
 7 methods of competition and unfair and deceptive acts and practices in  
 8 the business of insurance:

9 (1) Making, issuing, circulating, or causing to be made, issued, or  
 10 circulated, any estimate, illustration, circular, or statement:

11 (A) misrepresenting the terms of any policy issued or to be  
 12 issued or the benefits or advantages promised thereby or the  
 13 dividends or share of the surplus to be received thereon;

14 (B) making any false or misleading statement as to the  
 15 dividends or share of surplus previously paid on similar  
 16 policies;

17 (C) making any misleading representation or any  
 18 misrepresentation as to the financial condition of any insurer,  
 19 or as to the legal reserve system upon which any life insurer  
 20 operates;

21 (D) using any name or title of any policy or class of policies  
 22 misrepresenting the true nature thereof; or

23 (E) making any misrepresentation to any policyholder insured  
 24 in any company for the purpose of inducing or tending to  
 25 induce such policyholder to lapse, forfeit, or surrender the  
 26 policyholder's insurance.

27 (2) Making, publishing, disseminating, circulating, or placing  
 28 before the public, or causing, directly or indirectly, to be made,  
 29 published, disseminated, circulated, or placed before the public,  
 30 in a newspaper, magazine, or other publication, or in the form of  
 31 a notice, circular, pamphlet, letter, or poster, or over any radio or  
 32 television station, or in any other way, an advertisement,  
 33 announcement, or statement containing any assertion,  
 34 representation, or statement with respect to any person in the  
 35 conduct of the person's insurance business, which is untrue,  
 36 deceptive, or misleading.

37 (3) Making, publishing, disseminating, or circulating, directly or  
 38 indirectly, or aiding, abetting, or encouraging the making,  
 39 publishing, disseminating, or circulating of any oral or written  
 40 statement or any pamphlet, circular, article, or literature which is  
 41 false, or maliciously critical of or derogatory to the financial  
 42 condition of an insurer, and which is calculated to injure any



1 person engaged in the business of insurance.

2 (4) Entering into any agreement to commit, or individually or by  
3 a concerted action committing any act of boycott, coercion, or  
4 intimidation resulting or tending to result in unreasonable  
5 restraint of, or a monopoly in, the business of insurance.

6 (5) Filing with any supervisory or other public official, or making,  
7 publishing, disseminating, circulating, or delivering to any person,  
8 or placing before the public, or causing directly or indirectly, to  
9 be made, published, disseminated, circulated, delivered to any  
10 person, or placed before the public, any false statement of  
11 financial condition of an insurer with intent to deceive. Making  
12 any false entry in any book, report, or statement of any insurer  
13 with intent to deceive any agent or examiner lawfully appointed  
14 to examine into its condition or into any of its affairs, or any  
15 public official to which such insurer is required by law to report,  
16 or which has authority by law to examine into its condition or into  
17 any of its affairs, or, with like intent, willfully omitting to make a  
18 true entry of any material fact pertaining to the business of such  
19 insurer in any book, report, or statement of such insurer.

20 (6) Issuing or delivering or permitting agents, officers, or  
21 employees to issue or deliver, agency company stock or other  
22 capital stock, or benefit certificates or shares in any common law  
23 corporation, or securities or any special or advisory board  
24 contracts or other contracts of any kind promising returns and  
25 profits as an inducement to insurance.

26 (7) Making or permitting any of the following:

27 (A) Unfair discrimination between individuals of the same  
28 class and equal expectation of life in the rates or assessments  
29 charged for any contract of life insurance or of life annuity or  
30 in the dividends or other benefits payable thereon, or in any  
31 other of the terms and conditions of such contract. However,  
32 in determining the class, consideration may be given to the  
33 nature of the risk, plan of insurance, the actual or expected  
34 expense of conducting the business, or any other relevant  
35 factor.

36 (B) Unfair discrimination between individuals of the same  
37 class involving essentially the same hazards in the amount of  
38 premium, policy fees, assessments, or rates charged or made  
39 for any policy or contract of accident or health insurance or in  
40 the benefits payable thereunder, or in any of the terms or  
41 conditions of such contract, or in any other manner whatever.  
42 However, in determining the class, consideration may be given





to the nature of the risk, the plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.

(C) Excessive or inadequate charges for premiums, policy fees, assessments, or rates, or making or permitting any unfair discrimination between persons of the same class involving essentially the same hazards, in the amount of premiums, policy fees, assessments, or rates charged or made for:

(i) policies or contracts of reinsurance or joint reinsurance, or abstract and title insurance;

(ii) policies or contracts of insurance against loss or damage to aircraft, or against liability arising out of the ownership, maintenance, or use of any aircraft, or of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance; or

(iii) policies or contracts of any other kind or kinds of insurance whatsoever.

However, nothing contained in clause (C) shall be construed to apply to any of the kinds of insurance referred to in clauses (A) and (B) nor to reinsurance in relation to such kinds of insurance. Nothing in clause (A), (B), or (C) shall be construed as making or permitting any excessive, inadequate, or unfairly discriminatory charge or rate or any charge or rate determined by the department or commissioner to meet the requirements of any other insurance rate regulatory law of this state.

(8) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract or policy of insurance of any kind or kinds whatsoever, including but not in limitation, life annuities, or agreement as to such contract or policy other than as plainly expressed in such contract or policy issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends, savings, or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract or policy; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such insurance or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, limited liability company, or partnership, or any dividends, savings, or



1 profits accrued thereon, or anything of value whatsoever not  
2 specified in the contract. Nothing in this subdivision and  
3 subdivision (7) shall be construed as including within the  
4 definition of discrimination or rebates any of the following  
5 practices:

6 (A) Paying bonuses to policyholders or otherwise abating their  
7 premiums in whole or in part out of surplus accumulated from  
8 nonparticipating insurance, so long as any such bonuses or  
9 abatement of premiums are fair and equitable to policyholders  
10 and for the best interests of the company and its policyholders.

11 (B) In the case of life insurance policies issued on the  
12 industrial debit plan, making allowance to policyholders who  
13 have continuously for a specified period made premium  
14 payments directly to an office of the insurer in an amount  
15 which fairly represents the saving in collection expense.

16 (C) Readjustment of the rate of premium for a group insurance  
17 policy based on the loss or expense experience thereunder, at  
18 the end of the first year or of any subsequent year of insurance  
19 thereunder, which may be made retroactive only for such  
20 policy year.

21 (D) Paying by an insurer or insurance producer thereof duly  
22 licensed as such under the laws of this state of money,  
23 commission, or brokerage, or giving or allowing by an insurer  
24 or such licensed insurance producer thereof anything of value,  
25 for or on account of the solicitation or negotiation of policies  
26 or other contracts of any kind or kinds, to a broker, an  
27 insurance producer, or a solicitor duly licensed under the laws  
28 of this state, but such broker, insurance producer, or solicitor  
29 receiving such consideration shall not pay, give, or allow  
30 credit for such consideration as received in whole or in part,  
31 directly or indirectly, to the insured by way of rebate.

32 (9) Requiring, as a condition precedent to loaning money upon the  
33 security of a mortgage upon real property, that the owner of the  
34 property to whom the money is to be loaned negotiate any policy  
35 of insurance covering such real property through a particular  
36 insurance producer or broker or brokers. However, this  
37 subdivision shall not prevent the exercise by any lender of the  
38 lender's right to approve or disapprove of the insurance company  
39 selected by the borrower to underwrite the insurance.

40 (10) Entering into any contract, combination in the form of a trust  
41 or otherwise, or conspiracy in restraint of commerce in the  
42 business of insurance.



(11) Monopolizing or attempting to monopolize or combining or conspiring with any other person or persons to monopolize any part of commerce in the business of insurance. However, participation as a member, director, or officer in the activities of any nonprofit organization of insurance producers or other workers in the insurance business shall not be interpreted, in itself, to constitute a combination in restraint of trade or as combining to create a monopoly as provided in this subdivision and subdivision (10). The enumeration in this chapter of specific unfair methods of competition and unfair or deceptive acts and practices in the business of insurance is not exclusive or restrictive or intended to limit the powers of the commissioner or department or of any court of review under section 8 of this chapter.

(12) Requiring as a condition precedent to the sale of real or personal property under any contract of sale, conditional sales contract, or other similar instrument or upon the security of a chattel mortgage, that the buyer of such property negotiate any policy of insurance covering such property through a particular insurance company, insurance producer, or broker or brokers. However, this subdivision shall not prevent the exercise by any seller of such property or the one making a loan thereon of the right to approve or disapprove of the insurance company selected by the buyer to underwrite the insurance.

(13) Issuing, offering, or participating in a plan to issue or offer, any policy or certificate of insurance of any kind or character as an inducement to the purchase of any property, real, personal, or mixed, or services of any kind, where a charge to the insured is not made for and on account of such policy or certificate of insurance. However, this subdivision shall not apply to any of the following:

(A) Insurance issued to credit unions or members of credit unions in connection with the purchase of shares in such credit unions.

(B) Insurance employed as a means of guaranteeing the performance of goods and designed to benefit the purchasers or users of such goods.

(C) Title insurance.

(D) Insurance written in connection with an indebtedness and intended as a means of repaying such indebtedness in the event of the death or disability of the insured.

(E) Insurance provided by or through motorists service clubs



- 1 or associations.
- 2 (F) Insurance that is provided to the purchaser or holder of an
- 3 air transportation ticket and that:
- 4 (i) insures against death or nonfatal injury that occurs during
- 5 the flight to which the ticket relates;
- 6 (ii) insures against personal injury or property damage that
- 7 occurs during travel to or from the airport in a common
- 8 carrier immediately before or after the flight;
- 9 (iii) insures against baggage loss during the flight to which
- 10 the ticket relates; or
- 11 (iv) insures against a flight cancellation to which the ticket
- 12 relates.
- 13 (14) Refusing, because of the for-profit status of a hospital or
- 14 medical facility, to make payments otherwise required to be made
- 15 under a contract or policy of insurance for charges incurred by an
- 16 insured in such a for-profit hospital or other for-profit medical
- 17 facility licensed by the state department of health.
- 18 (15) Refusing to insure an individual, refusing to continue to issue
- 19 insurance to an individual, limiting the amount, extent, or kind of
- 20 coverage available to an individual, or charging an individual a
- 21 different rate for the same coverage, solely because of that
- 22 individual's blindness or partial blindness, except where the
- 23 refusal, limitation, or rate differential is based on sound actuarial
- 24 principles or is related to actual or reasonably anticipated
- 25 experience.
- 26 (16) Committing or performing, with such frequency as to
- 27 indicate a general practice, unfair claim settlement practices (as
- 28 defined in section 4.5 of this chapter).
- 29 (17) Between policy renewal dates, unilaterally canceling an
- 30 individual's coverage under an individual or group health
- 31 insurance policy solely because of the individual's medical or
- 32 physical condition.
- 33 (18) Using a policy form or rider that would permit a cancellation
- 34 of coverage as described in subdivision (17).
- 35 (19) Violating IC 27-1-22-25, IC 27-1-22-26, or IC 27-1-22-26.1
- 36 concerning motor vehicle insurance rates.
- 37 (20) Violating IC 27-8-21-2 concerning advertisements referring
- 38 to interest rate guarantees.
- 39 (21) Violating IC 27-8-24.3 concerning insurance and health plan
- 40 coverage for victims of abuse.
- 41 (22) Violating IC 27-8-26 concerning genetic screening or testing.
- 42 (23) Violating IC 27-1-15.6-3(b) concerning licensure of



insurance producers.

(24) Violating IC 27-1-38 concerning depository institutions.

(25) Violating IC 27-8-28-17(c) or IC 27-13-10-8(c) concerning the resolution of an appealed grievance decision.

(26) Violating IC 27-8-5-2.5(e) through IC 27-8-5-2.5(j) (expired July 1, 2007, and removed) or IC 27-8-5-19.2 (expired July 1, 2007, and repealed).

(27) Violating IC 27-2-21 concerning use of credit information.

(28) Violating IC 27-4-9-3 concerning recommendations to consumers.

(29) Engaging in dishonest or predatory insurance practices in marketing or sales of insurance to members of the United States Armed Forces as:

(A) described in the federal Military Personnel Financial Services Protection Act, P.L.109-290; or

(B) defined in rules adopted under subsection (b).

(30) Violating IC 27-8-19.8-20.1 concerning stranger originated life insurance.

(31) Violating IC 27-2-22 concerning retained asset accounts.

(32) Violating IC 27-8-5-29 concerning health plans offered through a health benefit exchange (as defined in IC 27-19-2-8).

(33) Violating a requirement of the federal Patient Protection and Affordable Care Act (P.L. 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (P.L. 111-152), that is enforceable by the state.

**(34) Violating IC 27-7-14 or rules adopted under IC 27-7-14 concerning home warranties, as set forth in IC 27-7-14-18.**

(b) Except with respect to federal insurance programs under Subchapter III of Chapter 19 of Title 38 of the United States Code, the commissioner may, consistent with the federal Military Personnel Financial Services Protection Act (P.L.109-290), adopt rules under IC 4-22-2 to:

(1) define; and

(2) while the members are on a United States military installation or elsewhere in Indiana, protect members of the United States Armed Forces from;

dishonest or predatory insurance practices.

SECTION 3. IC 27-7-14 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]:

#### **Chapter 14. Home Warranties**

**Sec. 1. As used in this chapter, "arbitration clause" means a**



1 provision of a home warranty under which a dispute between a  
 2 warranty holder and the home warranty provider is to be settled  
 3 through arbitration.

4 Sec. 2. As used in this chapter, "department" refers to the  
 5 department of insurance.

6 Sec. 3. As used in this chapter, "home appliance" means an  
 7 electrical or mechanical machine that performs or aids in the  
 8 performance of a household function, such as cooking, cleaning the  
 9 home, keeping food from spoiling, washing or drying clothes,  
 10 warming or cooling the home, or cleaning the air of the home. The  
 11 term includes, but is not limited to, a home's:

- 12 (1) air conditioning system;
- 13 (2) heating system;
- 14 (3) electrical system;
- 15 (4) plumbing system;
- 16 (5) water heater;
- 17 (6) whirlpool-type bathtub;
- 18 (7) refrigerator;
- 19 (8) oven, range, stove, or cooktop;
- 20 (9) dishwasher;
- 21 (10) built-in microwave;
- 22 (11) garbage disposal;
- 23 (12) clothes washer;
- 24 (13) clothes dryer;
- 25 (14) ductwork;
- 26 (15) garage door opener;
- 27 (16) ceiling and exhaust fans;
- 28 (17) pool or spa;
- 29 (18) water well pump;
- 30 (19) sump pump;
- 31 (20) septic system;
- 32 (21) central vacuum system; and
- 33 (22) stand alone freezer.

34 Sec. 4. (a) As used in this chapter, "home warranty" means a  
 35 contract under which a person undertakes to indemnify the  
 36 warranty holder against the cost of repairing or replacing, or to  
 37 repair or replace, a home appliance if the home appliance needs  
 38 repair or replacement.

39 (b) The term does not include a warranty or guarantee:

- 40 (1) that is provided by:
  - 41 (A) the builder of a home; or
  - 42 (B) the manufacturer or seller of an appliance; and



(2) for which the builder, manufacturer, or seller does not impose an identifiable charge.

Sec. 5. As used in this chapter, "home warranty form" means the written contract constituting a home warranty under this chapter.

Sec. 6. As used in this chapter, "home warranty provider" means a person that:

(1) enters into; or

(2) proposes to enter into;

a home warranty as the person undertaking to indemnify the warranty holder against the cost of repairing or replacing, or to repair or replace, a home appliance.

Sec. 7. As used in this chapter, "person" includes an individual, a corporation, a partnership, a limited liability company, an unincorporated association, or another legal entity.

Sec. 8. (a) As used in this chapter, "warranty holder" means a person who enters into a home warranty as the person paying compensation to the home warranty provider for undertaking to:

(1) indemnify the warranty holder against the cost of repairing or replacing; or

(2) repair or replace;

a home appliance.

(b) The term includes a person who succeeds to the position of the prior warranty holder under the terms of a home warranty.

Sec. 9. Before entering into or offering to enter into a home warranty in Indiana, a home warranty provider must:

(1) obtain a license from the department under section 10 of this chapter;

(2) ensure the faithful performance of its obligations to warranty holders by depositing with the department:

(A) a surety bond in the amount of one hundred thousand dollars (\$100,000);

(B) marketable securities having a market value of at least one hundred thousand dollars (\$100,000); or

(C) cash in the amount of at least one hundred thousand dollars (\$100,000); and

(3) submit to the department under section 11 of this chapter the home warranty forms that the home warranty provider will use in doing business as a home warranty provider in Indiana.

Sec. 10. (a) To obtain a license from the department, a home warranty provider must complete and submit to the department an



1 application on a form provided by the department.

2 (b) The form provided by the department for the purposes of  
3 this section must provide for the applicant to enter the following  
4 information:

5 (1) The location of the applicant's home office.

6 (2) The name and residence address of:

7 (A) each member of the applicant's board of directors;

8 (B) the principal executive officer of the applicant and  
9 other officers of the applicant who have policymaking  
10 authority or occupy upper level executive positions; and

11 (C) each shareholder of, partner or member in, or owner  
12 of the applicant who owns or controls at least ten percent  
13 (10%) of the applicant.

14 (3) Other information determined by the insurance  
15 commissioner:

16 (A) to be necessary or useful to the regulation of an  
17 applicant as a home warranty provider; or

18 (B) to bear on the worthiness of an applicant to do business  
19 in Indiana as a home warranty provider.

20 (c) An application submitted to the department under this  
21 section must be accompanied by the following:

22 (1) If the applicant is a corporation:

23 (A) a copy of the applicant's articles of incorporation,  
24 certified by the public official having custody of the  
25 original articles; and

26 (B) a copy of the applicant's bylaws, certified by the  
27 applicant's secretary or similar officer.

28 (2) A copy of the most recent financial statement of the  
29 applicant, verified under oath by at least two (2) of the  
30 applicant's principal officers.

31 (3) A license fee in the amount of two hundred dollars (\$200).

32 (d) Upon receiving a completed application under this section,  
33 the department shall examine the application and make any  
34 further investigation of the applicant that the department  
35 considers advisable. If the department determines that the  
36 applicant is qualified for the license, the department shall issue to  
37 the applicant a license as a home warranty provider. If the  
38 department determines that the applicant is not qualified for the  
39 license, it shall provide to the applicant a written notice:

40 (1) stating that the application is rejected; and

41 (2) setting forth the grounds for the rejection of the  
42 application.





1       **Sec. 11. (a) A home warranty provider may not use a home**  
 2 **warranty form unless:**

3       **(1) the text of the home warranty form has been submitted to**  
 4 **the department for review; and**

5       **(2) a period sufficient to enable the department to review the**  
 6 **home warranty form, as specified in the rules adopted under**  
 7 **this chapter, has passed.**

8       **(b) The department shall:**

9       **(1) review each home warranty form submitted to the**  
 10 **department under this section; and**

11       **(2) reject a home warranty form for use in Indiana if the**  
 12 **home warranty form:**

13       **(A) does not conform to the requirements of; or**

14       **(B) violates;**

15       **this chapter or rules adopted under this chapter.**

16       **(c) A home warranty provider may not use a home warranty**  
 17 **form that has been rejected under subsection (b)(2).**

18       **Sec. 12. (a) Upon entering into a home warranty with a**  
 19 **warranty holder, a home warranty provider shall immediately**  
 20 **provide a copy of the home warranty form to the warranty holder.**

21       **(b) The period during which a warranty holder is entitled to**  
 22 **rescind the home warranty under the provision included in the**  
 23 **home warranty form under section 13(a)(1) of this chapter does not**  
 24 **begin until the warranty holder acknowledges in writing that the**  
 25 **warranty holder has received a copy of the home warranty under**  
 26 **this section.**

27       **Sec. 13. (a) A home warranty form used in Indiana must provide**  
 28 **that:**

29       **(1) the warranty holder may exercise the right to rescind the**  
 30 **home warranty at any time before the end of the third**  
 31 **business day after the day on which the warranty holder:**

32       **(A) receives a copy of the home warrant under section**  
 33 **12(a) of this chapter; and**

34       **(B) acknowledges in writing under section 12(b) of this**  
 35 **chapter that the warranty holder has received a copy of**  
 36 **the home warranty; and**

37       **(2) any reasonable form of communication of the rescission by**  
 38 **the warranty holder to the home warranty provider will be**  
 39 **effective, including communication by telephone call or**  
 40 **electronic mail to the telephone number or electronic mail**  
 41 **address provided by the home warranty provider.**

42       **(b) A home warranty form used in Indiana must conspicuously**



1 state the warranty holder's right of rescission as described in  
 2 subsection (a). The provision of the home warranty form  
 3 concerning the right of rescission must set forth in conspicuous text  
 4 the telephone number and electronic mail address that a warranty  
 5 holder may use to communicate the warranty holder's rescission  
 6 of the home warranty to the home warranty provider. The  
 7 provision described in this subsection must be included in the copy  
 8 of the home warranty form provided to the warranty holder under  
 9 section 12(a) of this chapter.

10 (c) If a warranty holder exercises the right of rescission as  
 11 described in subsection (a) within the period allowed by this  
 12 section, the home warranty provider shall refund to the warranty  
 13 holder one hundred percent (100%) of the money paid by the  
 14 warranty holder to the home warranty provider upon entering into  
 15 the home warranty.

16 (d) If a home warranty provider, in violation of section 12(a) of  
 17 this chapter, does not provide a copy of the home warranty form  
 18 to the warranty holder immediately upon entering into the home  
 19 warranty with the warranty holder, the warranty holder's right of  
 20 rescission as described in subsection (a) does not expire until the  
 21 end of the third business day after the day on which the warranty  
 22 holder, having received a copy of the home warranty form from  
 23 the home warranty provider, acknowledges in writing under  
 24 section 12(b) of this chapter that the warranty holder has received  
 25 a copy of the home warranty.

26 Sec. 14. A home warranty form used in Indiana may not provide  
 27 that a home warranty provider's obligation to the warranty holder  
 28 in connection with the repair or replacement of a home appliance  
 29 is limited to a specified dollar amount irrespective of the actual  
 30 total cost of repairing or replacing the home appliance.

31 Sec. 15. If a home warranty form used in Indiana contains an  
 32 arbitration clause, the following apply:

33 (1) Neither the home warranty provider nor the terms of the  
 34 home warranty may require the warranty holder to pay the  
 35 cost of repairing or replacing a home appliance before the  
 36 home warranty provider and the warranty holder enter into  
 37 arbitration of a dispute concerning the repair or replacement  
 38 of the home appliance.

39 (2) The home warranty form:

40 (A) must provide for the arbitration proceeding to take  
 41 place under IC 34-57-1 in the county in Indiana in which  
 42 the warranty holder resides; and



(B) may not specify that the arbitration proceeding is to be conducted by or through the American Arbitration Association.

Sec. 16. (a) The surety bond, marketable securities, or cash deposited by a home warranty provider under section 9(2) of this chapter:

(1) shall be retained by the department throughout the period during which the home warranty provider does business in Indiana as a home warranty provider, subject to use under subdivision (2); and

(2) may be used by the department to satisfy any obligations of the home warranty provider to a warranty holder in Indiana if the home warranty provider:

(A) refuses, without legal justification, to satisfy the obligation; or

(B) becomes insolvent.

(b) If a home warranty provider:

(1) ceases to do business in Indiana; and

(2) furnishes to the department proof satisfactory to the insurance commissioner that the home warranty provider has discharged or otherwise adequately provided for all of its obligations to warranty holders in Indiana;

the department shall release to the home warranty provider the surety bond, marketable securities, or cash deposited by the home warranty provider under section 9(2) of this chapter.

Sec. 17. The department shall adopt rules under IC 4-22-2 to administer this chapter.

Sec. 18. (a) A violation of this chapter or the rules adopted under this chapter by a home warranty provider is:

(1) an unfair and deceptive act or practice in the business of insurance under IC 27-4-1-4; and

(2) a deceptive act that is:

(A) actionable by the attorney general under; and

(B) subject to the remedies and penalties set forth in;

IC 24-5-0.5.

(b) The department and the office of the attorney general have concurrent authority to take action against a home warranty provider under subsection (a).

